

WILLIAM M. STEISKAL

IBLA 79-286

Decided August 27, 1979

Appeal from a decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 56513, terminated by operation of law for failure to pay rental timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after it is due does not meet the reasonable diligence requirement.

2. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rental

Reliance on receipt of a courtesy billing notice from BLM is not a justifiable excuse upon which to predicate reinstatement of an oil and gas lease terminated for failure to pay rental timely. The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to appellant's former address is not a justifiable excuse for late payment.

APPEARANCES: John Paul Batt, Esq., Calfee, Halter & Griswold, Cleveland, Ohio, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

William M. Steiskal appeals from the February 12, 1979, decision of the Wyoming State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of oil and gas lease W 56513, terminated by operation of law pursuant to 30 U.S.C. § 188(b) (1976) for failure to pay annual rental due on or before November 1, 1978.

Appellant mailed the rental payment on November 3, and it was received by BLM November 7, 1978. BLM, by letter of November 14, called upon appellant for an explanation of the late rental payment. This letter, sent by certified mail, was returned by the Postal Service to BLM December 11, 1978, with the notation "unclaimed." In January 1979, appellant wrote to BLM, inquiring into the status of his lease. BLM then remailed its letter of November 14, 1978, to which appellant replied that he had notified the Postal Service of his new address but that mail was not forwarded promptly, with the consequence that the BLM rental bill was not received until November 3; at that time he called BLM and was advised to transmit the required payment. BLM denied reinstatement of lease W 56513 because appellant had not shown the late payment was justifiable or not due to lack of diligence on his part.

Appellant now restates the reasons he presented to BLM, essentially that he made previous payments on this lease immediately upon receipt of the billing notice; that he did not note his records that the rental would be a recurring debt due on or before November 1 each year; that the 1978 billing notice was received November 3, presumably because he had moved to a new address and the Postal Service was slow in forwarding his mail; and that upon receipt of the billing notice, he had called BLM and was advised to send the rental payment, even though then late.

[1] The pertinent statute and regulations, 30 U.S.C. § 188(c) (1976), and 43 CFR 3108.2-1(c), specify that an oil and gas lease terminated by operation of law for failure to pay the annual rental on time may be reinstated if, among other things, the late payment is either justifiable or not due to a lack of reasonable diligence. "Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). Mailing the payment after it is due does not meet this requirement. Apostolos Paliombeis, 35 IBLA 180 (1978); Lula Mai Martin, 27 IBLA 360 (1976); Bobbie Arnold, 24 IBLA 352 (1976).

[2] Thus, appellant must show that his late payment was justifiable. His only explanation is that he did not receive the notice that payment was due in time to comply with the statute.

Notices of rental due are merely courtesy notices and are not required by law. Failure to receive such a notice on time does not justify failure to pay the rental on time. Energy Reserve, Inc., 30 IBLA 11 (1977); Apostolos Paliombeis, *supra*. The obligation to pay arises from the terms of the statute. Id. The fact that the courtesy rental notice was delayed in reaching appellant because it was sent to his former address is not a justifiable excuse for late payment. Appellant had not notified BLM of his new address, but relied, instead, on the Postal Service to forward his mail. Failure of the Postal Service to forward the mail timely does not relieve appellant of his obligation to pay rental timely. Serio Exploration Co., 26 IBLA 106 (1976). Cf. Richard C. Corbyn, 32 IBLA 296 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

